

IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN

City of La Crescent

and

BMS Case No. 06-PN-0462

Law Enforcement Labor Services, Inc. – Local 120

NAME OF ARBITRATOR:

George Latimer
Assistant Faith Latimer

DATE AND PLACE OF HEARING:

October 25, 2006
La Crescent City Hall

BRIEFS RECEIVED:

November 10, 2006

DATE OF AWARD:

December 8, 2006

APPEARANCES

FOR THE EMPLOYER:

Chris Hood, Attorney, Flaherty & Hood, P.A.
Brandon Fitzsimmons, Attorney,
Flaherty & Hood, P.A.
Bill Waller, City Administrator, City of La Crescent
Debbie Shimshak, Finance Director,
City of La Crescent

FOR THE UNION:

Dean Mann, Business Agent, LELS
Scott Yeiter, President Law Enforcement Labor
Services...Local 120

INTRODUCTION

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. 179A.01-30. LELS (Union) is the exclusive representative for law enforcement officers employed by the City of La Crescent (Employer or City). The most recent collective bargaining agreement between the parties expired December 31, 2005. The parties negotiated for a successor contract and reached agreement on some but not all of the items being negotiated.

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. 179A.16) The Minnesota Bureau of Mediation Services certified this matter for arbitration on February 2, 2006. The following issues were certified for arbitration:

1. Duration-Length of Agreement- Art. 25
2. Compensation-Amount of General Increase Year 1-Art. 15
3. Compensation-Amount of General Increase Year 2, if Awarded-Art. 15
4. Compensation-Wage Schedule, Number of Steps to Top of Schedule-Art 15
5. Insurance-Employer Contribution to Health Insurance Year 1-Art. 13
6. Insurance-Employer Contribution to Health Insurance Year 2, if Awarded-Art. 13
7. Holidays-Number of Hours Paid as Holiday-Art. 14
8. Court Time-Notice for Court Cancellation-Art. 7
9. Compensation-Working Out of Class Pay-New

Prior to this arbitration hearing, the parties reached agreement on issues 4, 5, 6 and 7. Accordingly, issues 1, 2, 3, 8 and 9 are to be decided by this arbitration. A hearing was held on October 25, 2006 at La Crescent City Hall. Both parties were given full opportunity to present their positions through submission of exhibits and testimony. Upon receipt of post hearing briefs the record was closed on November 10, 2006.

ISSUE # 1 DURATION-ARTICLE 25

Union Position

Term of the collective bargaining agreement to be one year, covering January 1, 2006 to December 31, 2006.

Employer Position

Term of the collective bargaining agreement to be two years, covering January 1, 2006 to December 31, 2007.

Union Arguments

The Union argues that a one year agreement would allow the parties to return to the bargaining table to resolve outstanding issues. It further believes there is a lack of data supporting settlement of compensation issues the second year. It points out over the past 20 years, collective bargaining agreements between the parties have varied in duration including one, two and three year agreements, and that the current agreement between the City and IUOE Local 49 is a one year contract. (Union Arbitration Notebook pp 8-11)

Employer Arguments

The City argues first that the bargaining history between these parties supports a two year agreement; seven of the last ten contracts have been two years in duration. It argues a two year agreement is consistent with the current contract between the City and AFSCME, and that external comparisons favor its position, in that of the six comparable cities in La Crescent's Economic Development Region and Planning Area, none have one year agreements.

The City also argues that a one year agreement would require the parties to return almost immediately to the bargaining table. Stability in the labor-employer relationship is encouraged by having more time between negotiations. (Employer Arbitration Notebook pp 40-41 and brief)

Discussion

The strongest argument in favor of a two year agreement is the greater efficiency and stability afforded by a longer wait, prior to reopening negotiations. These advantages must be weighed against the incompleteness of information on 2007. The wage data on other police departments is much less complete for 2007 than for this year. Potential ability to pay issues for 2007 are also much less certain than for 2006, since the City's financial condition could change in either positive or negative ways in that time. Even with respect to internal comparisons there is less certainty about 2007, since one of the other bargaining unit contract expires in one year.

Under these circumstances, a compensation award for 2007 would require a greater level of guesswork than the Arbitrator believes appropriate. In addition the record does not suggest that a one year agreement would be a radical departure from the history between the parties. Therefore the Arbitrator awards a contract duration of one year.

Award

A one (1) year agreement, effective January 1, 2006 through December 31, 2006.

ISSUES #2 and #3 COMPENSATION YEAR 1-and YEAR 2 -ARTICLE 15 and APPENDIX A

As noted above, information and arguments related to the compensation issues for 2006 and 2007 influenced the Arbitrator's decision concerning contract duration. Therefore the parties' positions and arguments for both years are included here.

Union Position

A general wage increase of 8% each year of the agreement.

Employer Position

A general wage increase of 3% each year of the agreement.

Union Arguments

The Union posits four relevant factors for the Arbitrator to consider in the question of compensation: the City's ability to pay; internal comparisons; market comparisons; and general economic conditions.

With respect to ability to pay, the Union points to the City's most recent audited budget, for the year ending December 2005. The budget indicates both total assets and net assets increased from 2004 to 2005, and that the City's financial status has improved by more than \$800,000. (Union Arb Notebook pp 23-31) The Union also cited a September 2006 local news article reporting on the budget recently set by the La Crescent City Council. The article notes City plans to hire an additional police officer. (Union notebook p.32-33).

With respect to internal equities, the Union examined the requirements of the Minnesota Local Government Pay Equity Act, and submitted analysis of the effect of the Union's final wage proposal for the City of La Crescent. Since the City would be in compliance with the Pay Equity Act under either wage proposal, this does not present a problem for awarding the Union proposal. (Union notebook pp 35-85).

The Union also presented data that in 2004 and 2005, the Operating Engineers bargaining unit received higher wage increases than LELS (3% and 3.5% compared to 2% and 2%) and that the City Administrator and Finance Director received 19% increases in 2005. (Union p. 87) Therefore there is no pattern to La Crescent's wage settlements, and no necessity to hold this bargaining unit to a particular wage figure.

Regarding market comparisons, the Union points first to the City of Caledonia Police Department and Houston County Sheriff's Department (both La Crescent and Caledonia are in Houston County). Its data shows 2005 wage rates in La Crescent are 3.85% below that of Caledonia, and 6.52% below Houston County. It also shows the wage increases in both those law enforcement bargaining units have been above La Crescent's since 2002. (Union pp 110-112)

Another external comparison group used by the Union is the 29 Minnesota cities located south of Highway 212. Of these, La Crescent ranked 18th in top pay rate in 2005. The average wage increase in 2005 was 4.36%, compared to 2% for La Crescent. The Union also examined 2005 wage rates in 109 non-metro Minnesota cities. While La Crescent ranks 54th in population, it ranks 77th in top police officer pay rates. La Crescent's starting wage is 12.59% below the average of these cities, its top wage is 5.36% below the average. (Union pages 113-117)

Finally the Union argues that economic conditions support its wage proposal. The Consumer Price Index for all of the Midwest shows an inflation rate of 3.5% in the first half of 2006, 4.2% for Class D cities. In addition, statewide economic conditions are stabilizing, with optimistic signs for the future. (Union pp 134-143) In light of this positive economic forecast, and the comparisons cited above, the Union argues its wage proposal is reasonable.

Employer Arguments

The Employer argues that an interest arbitration award should aim to grant the same contract settlement which would have resulted from the bargaining process. In this case, the City's position would grant the same general wage increase and Employer contribution to health insurance as that bargained with AFSCME. There is a history of this bargaining unit agreeing to a wage package substantially the same or identical to AFSCME and IUOE. Therefore the predictable outcome of bargaining between LELS and the City would maintain this prevailing practice. Accordingly, the primary consideration in the compensation issue should be internal comparisons.

Wage data shows that in eight of the last nine years, this bargaining unit received the same wage percentage increases as the AFSCME unit. The only exception was in 2001, when the LELS settlement called for not increasing the City's contribution to health insurance premiums, in exchange for a higher wage increase.(Employer brief and notebook pp 6-11)

The Employer argues it is not appropriate to compare bargaining unit wage increases to that of non-union employees. The wages of non-union employees are not bargained, but are individually voted on by the city council, each year. Therefore each situation is unique, and some years there may be no increase. (Employer brief)

With respect to external wage comparisons, the City disagrees with the Union's criteria for appropriate comparison groups. It argues first that Houston County is not an appropriate entity for comparison, for several reasons. The population of the county is about 20,000, four times that of La Crescent. In addition the county has different funding sources, management structure and service responsibilities than the City. (Employer notebook pp 13-14 and brief) The Employer applied three criteria to selecting which

cities should be compared to La Crescent: population, geography and union status. The population parameters used by the City are 2,500 to 7,500 (population of La Crescent is about 5,000). With respect to geographic area, the City uses Economic Development Regions and Planning Areas, as defined by Minnesota Dept of Employment and Economic Development. Southern Minnesota contains two Planning Areas, and three Economic Development Regions within those. La Crescent is located in the Southeast Planning Region, and in Economic Development Region 10, which are geographically identical. Using unionized police departments within these geographic and population limits, the City asserts 21 cities are comparable to La Crescent. (Employer brief and notebook pp12-18 and Exhibits 11-13)

The 2005 average top hourly wage rate among 20 of these cities is \$20.08. (There was one city for which the Employer was unable to obtain wage data) La Crescent's average top wage of \$20.26 is just above that. The average wage increase for 2006 (data available for 17 of the cities) is 3%. Therefore the City's proposal for 2006 would keep La Crescent at the average of this group. In addition, the City points out that this collective bargaining agreement provides for a step progression allowing employees to reach the top of the wage scale in 49 months. Since this is a shorter progression to the top than many other contracts, an accurate analysis would compare comparable cities' wage rates at 49 months of service. Applying this arithmetic results in a slightly more favorable placement for La Crescent, a 2005 average figure of \$19.70 for the 20 cities (compared to \$20.26 for La Crescent). The 2006 average (49 months) figure would be \$20.22, compared to a City proposal of \$20.87. In terms of ranking using the 49 month figure, La Crescent ranks sixth of the 20 cities in 2005, and retains that position under the City's wage proposal for 2006.

Because fewer cities have settled their collective bargaining agreements for 2007, the comparison pool is only 12 cities. Again however La Crescent holds a respectable position, seventh of twelve cities for the top pay, or fourth of twelve for the 49 month wage figure. (Employer notebook pp 12-19, exhibits 11-14)

The City argues that its ability to pay is not the most relevant factor in this case, and that the Arbitrator should give more weight to internal and external comparison factors. However it puts forth several considerations which relate to the question of ability to pay.

First, it examines the actual total costs of each wage increase proposal. When the cost of steps, health and dental benefits, overtime and shift differentials, retirement contributions and other factors are included, the City's proposal would increase costs 6.48% (2006) and 5.75% (2007), while the Union's proposal would be 10.71% (2006) and 9.58% (2007), an unreasonable increase for the City. (Employer brief p. 17, Table 8 revised) Related to this factor is contribution rate increases to PERA which have been mandated by law (an increase from 9.3% in 2005 to 14.10% in 2009). (Employer pp26-27)

The second ability to pay factor cited by the Employer is the general city budget picture. The Police Department makes up nearly 27% of the City's general fund expenditures, and therefore any cost increases have a significant impact on the budget. In addition, the City asserts that its most recent audited budget shows a low unreserved fund balance (19.2%). The State Auditor recommends an unreserved fund balance between 35 and 50%, "to carry them through financial downturns or unexpected contingencies". (Employer pp24-26, exhibits 15-18).

Finally the City points to three costly future projects which may affect the City's financial outlook. These projects are radon removal, a major Department of Transportation construction project which the City will have to fund a portion of, and possible changes to the wastewater treatment facility (estimated cost of \$2 million) (Employer brief and notebook p27)

The Employer also submits data relating to general wage increases in the region (2004-2005) and CPI increases (2000-2005, small cities in the Midwest). Although arguing that CPI data is generally unreliable in this context, the City points out that even this data indicates average annual increases of less than the 3% proposed by the City. (Employer pp27-30)

The City argues that an examination of all the relevant factors support its position. The Union's proposal for an 8% increase is unjustified, and its proposal for a 3% general wage increase is reasonable.

Discussion

Turning first to the issue of the City's ability to pay, the parties' arguments indicate it is essentially undisputed that La Crescent would be able to pay the cost of either one of

the wage proposals. The Arbitrator also accepts the assertions of both parties that compliance with the Minnesota Pay Equity Act would not be jeopardized under either of the wage proposals. Since ability to pay does not constitute a serious impediment to the dollar figures at issue, it is not necessary to analyze details of the parties' arguments regarding the City's financial condition. In this case, the Arbitrator considers ability to pay less relevant than the other factors.

Turning next to the parties' arguments regarding internal comparisons, data presented on this question are not overwhelming for either party. The available comparisons constitute a very small data base. The Employer is correct in arguing that non-union management level employees are distinguishable from this bargaining unit. The Arbitrator also accepts the City's general assertion that internal equity among its bargaining units is desirable. However there is some variation from year to year among the three bargaining units with respect to wage rates. While these comparisons do not support an 8% wage increase for LELS, neither are they persuasive standing alone, that 3% must be awarded. Since the information concerning external comparisons is more substantial and the facts clearer, more weight is given to external comparisons.

With respect to the selection of comparison law enforcement groups, the Arbitrator finds the City's selection more appropriate. The Union's list of 109 'Greater Minnesota Cities' includes cities which are clearly not comparable to La Crescent by virtue of population size. Since the Union did not offer any criteria by which the 109 were chosen from all greater Minnesota cities, the list lacks legitimacy. With respect to Houston County, the Arbitrator does not accept the Employer's suggestion that a county law enforcement agency can never be comparable to a city's. However it is the case that Houston County has significantly larger population, as well as the other funding and governance differences mentioned. Since there is ample data from city police departments to examine, those must be judged more appropriate comparisons to La Crescent.

Finally the Arbitrator compared the Union's list of 29 cities south of Highway 212 to the Employer's list of 21. The Employer pointed to some flaws in the Union's list, such as the inclusion of several cities with non-unionized police forces; and the exclusion of at least two cities which are located south of Hwy 212. These points beg the question:

besides being south of 212, what if any other criteria were used to determine the list of cities? The Union did not offer any explanation or argument addressing these problems.

While there could be a number of criteria combinations which would be legitimate and appropriate, the Arbitrator finds the Employer's combination of population parameters, Economic Development and Planning Districts, and unionized police forces to have more coherence and logic than does the Union's.

The Employer also made a logical assertion that a comparison of salaries paid to officers at 49 months of service is the most accurate reflection of reality. This construct was not refuted by the Union. While the Union's data do not break down wages by length of service, it is clear that if the 49 month figure was used in relation to the Union's own list of comparable cities, the City's proposed wage increase puts La Crescent within .06% of the average. It is worth noting that thirteen cities were common to both lists, and that the Union's data (without allowing for the 49 month comparison) indicates a 2006 average wage increase much closer to the Employer's proposal than to its own (3.69%).(Union p.113, Employer p.16, Ex 13)

While there is no perfect mathematical formula to address a dispute of this kind, the evidence indicates strongly that a 3% general wage increase is very close to average for the relevant market, and that La Crescent wage levels would remain in the middle of the range.

Award

A 3% general increase in wages retroactive to 1/1/06.

ISSUE #8 NOTICE FOR COURT CANCELLATION-ARTICLE 7

Union Position

7.3: Paragraph one unchanged. Paragraph two (deletions indicated by strike-outs, additions indicated by italics): Employees will be notified of the cancellation of court appearances at least ~~twelve (12)~~ *twenty-four (24)* hours prior to the scheduled appearance. If notification of cancellation is less than ~~twelve (12)~~ *twenty-four (24)* hours prior to the scheduled appearance the employee will receive the three (3) hour court time minimum.

Employer Position

No change from existing agreement.

Union Arguments

The Union argues that officers often work evening hours, while court appearances occur during the day. This creates difficulties with sleep schedules and childcare arrangements. An increase to 24 hours in this section of the article helps compensate for this. The Union submitted data showing a variety of contract provisions on this issue among LELS Locals. (Union notebook pp 148-151 and brief)

Employer Arguments

The City argues this is a new benefit, and therefore should not be awarded absent a compelling argument from the Union. The Union has made no such compelling argument. It also asserts that four of the six most comparable cities provide no compensation if a scheduled court appearance is canceled.

The City also points out that since the county court administrator controls the court schedule, this benefit is a cost item for the City which it has no ability to mitigate. (Employer pp 44-46)

Discussion

On this issue, comparisons to other La Crescent bargaining units have no meaning, since court appearance scheduling issues would rarely or never arise for them. The data on external comparisons appears to be varied, and therefore not persuasive in either direction. The Arbitrator notes this proposal by the Union would not be a new benefit, but rather an enhancement of an existing one. It is the type of language change which could very well occur in the normal course of bargaining. The Employer has asserted the current practice on court cancellation is that the notice occurs by the end of the business day prior to the scheduled appearance. Contract language incorporating the end of the business day would reflect logical timing, and not be a departure from what usually occurs. 4:30 p.m. would seem to be a reasonable cut off time. Therefore the Arbitrator

rules for contract language requiring the three hour court time minimum when notice occurs later than that.

Award: Article VII Section 7.3 Paragraph one unchanged.

Paragraph two: Employees will be notified of the cancellation of court appearances by 4:30 p.m. on the business day prior to the scheduled appearance. If notification of cancellation occurs later than 4:30 p.m. on the business day prior to the scheduled appearance, the employee will receive the three (3) hour court time minimum.

ISSUE #9 WORKING OUT OF CLASS PAY-NEW

Union Position

Employees assigned by the Employer to assume the duties and responsibilities of a higher job classification shall be compensated at the higher job classification's rate pay for the duration of the assignment.

In the absence of a supervisor, the senior officer shall be in charge and shall be compensated at the supervisor's rate of pay.

Employer Position

No change from existing agreement.

Union Arguments

The Union argues that it is reasonable for employees to be compensated for performing duties beyond their regular job description. Supervision is not part of a patrol officer's duties. It points out that prior to 2001, this department included one sergeant who performed supervisory duties. When he became Chief, the sergeant position was eliminated. This means that when the Chief is away, a patrol officer is assigned his duties, with no extra compensation. The Union submitted data to support its argument that the industry standard is to provide a pay differential in these circumstances. (Union notebook pp 153-162 and brief)

Employer Arguments

The Employer again argues that the six city external comparison does not support the Union's position. It also argues this provision would infringe on the Chief's right to assign, an inherent management right. Moreover the City argues this would be a new contract provision, which the Union makes no compelling arguments for. Therefore it would not be appropriate to award such a provision in the arbitration process. (Employer pp 47-48 and brief)

Discussion and Award

The Arbitrator recognizes the high level of discretion exercised by police officers in the course of their duties. The peace officer position description indicates no supervisory duties. Since the sergeant level position has been eliminated, the Union raises a legitimate question about duties and appropriate compensation. However, the Union submitted no evidence of the frequency of this occurring, details of responsibility, how such assignments are made, or cost estimates of its proposal. Lacking such details or compelling arguments in its favor, and since this proposal would be an entirely new contract provision, it would be more appropriately dealt with at the bargaining table. The Arbitrator awards no change from the existing contract language.

George Latimer, Arbitrator

Date